Law Offices of Gregory J. Vogt, PLLC

103 BLACK MOUNTAIN AVE.
SUITE 11
BLACK MOUNTAIN, NC 28711

www.vogtlawfirm.com

Gregory J. Vogt
828.669.2099 (office)
gvogt@vogtlawfirm.com

REDACTED – FOR PUBLIC INSPECTION

October 13, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Applications of Charter Communications, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership For Consent To the Transfer of Control of Licenses and Authorizations, MB Docket No. 15-149

Dear Ms. Dortch:

Attached is the Comments of Hawaiian Telcom Services Company, Inc. ('Hawaiian Telcom"), which contains highly confidential information to Hawaiian Telcom under the terms of the Protective Order in the above-captioned docket.[1]

In accordance with that Order, I have attached one copy of Hawaiian Telcom's Stamped Highly Confidential document, plus two copies addressed to Vanessa Lemmé in the Media Bureau. The redacted copy of the document is being filed electronically in ECFS, which omits highly confidential information.

Sincerely,

/s/ Gregory J. Vogt

Gregory J. Vogt
Counsel for Hawaiian Telcom Services Company, Inc.

Enclosure

---

[1] *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent To Assign or Transfer Control of Licenses and Authorizations,* Protective Order, MB Docket No. 15-149, DA 15-149 (rel. Sep. 11, 2015) ("Protective Order").

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Charter Communications, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership	)))	MB Docket No. 15-149
	)	
For Consent To the Transfer of Control of Licenses and Authorizations	))	

COMMENTS OF HAWAIIAN TELCOM SERVICES COMPANY, INC.

Steven P. Golden
Vice President External Affairs
Hawaiian Telcom Services Company, Inc.
1177 Bishop Street
Honolulu, Hawaii 96813

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
103 Black Mountain Ave., Suite 11
Black Mountain, NC 28611
(828) 669-2099
gvogt@vogtlawfirm.com

Counsel for Hawaiian Telcom Services Company, Inc.

October 13, 2015

SUMMARY

Video and broadband competition in Hawaii is distinct from video and broadband competition in the continental United States and requires a separate analysis of the potential harms to the public interest of the state's video and broadband consumers. The state's island terrain and its geographic location make competition difficult. Over-the-air broadcast and satellite are not reliable options for most customers, evidenced by an above average subscription rate to Multichannel Video Programming Distributor ("MPVD") service. Similarly, the rugged terrain of the islands makes deployment of new broadband and video facilities virtually impossible. Consumers are thus left with little choice for video and broadband services besides Oceanic Time Warner Cable ("TWC" or "Oceanic TWC"). TWC commands significant market share in both the video and broadband markets and the most relevant market—the video/broadband bundle. As a result, TWC engages in anti-competitive practices, imposing unreasonable terms and conditions upon unaffiliated MVPDs such as Hawaiian Telcom, particularly with respect to programming owned or controlled by TWC.

Under Sections 214 and 310(d) of the Communications Act, the Commission is required to evaluate whether the proposed transaction will serve the public interest, which the Applicants must prove by a preponderance of the evidence. The Commission's review is informed by traditional antitrust principles, but is not limited to them. The Commission must also consider whether the transaction enhances competition, rather than merely preserve existing competition.

The proposed acquisition of TWC and Advance/Newhouse Partnership ("Advance") by Charter Communications, Inc. ("Charter") will create an entity that will command 17 percent of nationwide video subscribers and 21 percent of Internet customers. This nationwide dominance will be even more powerful, with attendant anti-competitive potential, in Hawaii, where OTW already serves 76 percent of video customers and 69 percent of high speed Internet customers.

Such a dominant entity will lead to additional harms to competition and consumers in four areas.

First, with respect to programming, the combined entity will have the incentive and ability to deny access, or impose unreasonable terms and conditions for access by competitors of TWC to "must have" regional sports networks ("RSN") such as OCSports, other local sports and local interest channels, and "must have" national cable channels such as Discovery Communications Inc. programming (e.g., Discovery, TLC, Animal Planet, OWN).

Second, the proposed acquisition by Charter will allow TWC to extend its already significant market power in the Hawaii market to purchase content from nonaffiliated programmers at discriminatory discounts and use that power to drive out its competition and ultimately raise prices.

Third, the combined Charter/TWC/Advance will have increased market power in the video and broadband market to utilize exclusive contracts to deny Hawaiian Telcom and other unaffiliated competitors' access to local and national sales, installation, construction and field collections contractors, as well as MDU locations.

Fourth, the combined entity by means of enhanced scale and buying power may restrict nonaffiliated MVPDs access to emerging technology equipment, such as DOCSIS 3.1 and TV Everywhere-intensive offerings.

Past commission precedent, in the *Adelphia* and *Comcast/NBCU* Orders, have imposed significant conditions on transactions which involved increased cable TV and broadband provider market power. To prevent the harms identified above, the Commission should apply these precedents to condition grant of the Applications and impose conditions that alleviate these harms by requiring the merged Charter/TWC/Advance to:

- provide programming on reasonable terms and conditions and subject to mandatory arbitration in the event negotiations fail to reach agreement;

- provide unaffiliated MVPDs in Hawaii with continued access to RSN programming on fair terms and conditions;
- provide unaffiliated MVPDs in Hawaii with access to local sports and other local interest channels on fair terms and conditions;
- prohibit Charter/ TWC/Advance from entering into exclusive programming content arrangements with non-affiliated and affiliated content providers;
- prohibit Charter/TWC/Advance from entering exclusive contracts with installation, construction or equipment vendors;
- prohibit Charter/ TWC/Advance from employing unreasonable practices in competing for MDU contracts; and
- prohibit Charter/ TWC/Advance from anticompetitively influencing how hardware and software suppliers deal with unaffiliated providers.

TABLE OF CONTENTS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Charter Communications, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership	)	MB Docket No. 15-149
	)	
For Consent To the Transfer of Control of Licenses and Authorizations	)	

COMMENTS OF HAWAIIAN TELCOM SERVICES COMPANY, INC.

I. INTRODUCTION

Approximately four years ago, Hawaiian Telcom Services Company, Inc. ("Hawaiian Telcom") launched the first landline based competitive video service in Hawaii. While Hawaiian Telcom's customers have shown that they value the advanced, feature-rich, and easy-to-use Hawaiian Telcom video service, most notably, they have expressed gratitude for finally being provided with a viable alternative choice to Time Warner Cable ("TWC" or "Oceanic TWC"), the dominant video provider in Hawaii. Hawaiian Telcom is concerned, however, that if the Charter Communications, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership ("Charter/TWC/Advance") mergers are allowed to go forward without adequate conditions, the combined Charter/TWC/Advance will have the incentive and ability to impede effective competition in Hawaii in both the video programming distribution and wired broadband markets.

Hawaii's multiple islands and unique terrain present steep entry barriers that deter deployment of alternative communications infrastructure. This enhances the ability of Charter/TWC/Advance to take anticompetitive actions that could hinder the ability of Hawaiian

Telcom or others to compete. Charter/TWC/Advance's ability to impede competition in Hawaii is significantly greater than in most of the continental U.S. because of the lack of reliable competitive alternatives from either over-the-air television or Direct Broadcast Satellite ("DBS"). This situation leaves TWC—absent viable competition from wireline providers such as Hawaiian Telcom—as the monopoly provider of 76 percent of the video services in the state of Hawaii. TWC has also leveraged its monopoly market share in video services to gain a monopoly share in the wired broadband market in Hawaii.

TWC in Hawaii already enjoys the benefits of having been largely insulated from competition for years and has engaged in a broad range of anti-competitive behavior aimed at thwarting nascent wireline competition from Hawaiian Telcom. TWC's incentives and abilities to impede competition will grow exponentially with the added market power of Charter and Advance. In order to protect consumers and encourage effective competition, Hawaiian Telcom strongly advocates that the Commission carefully scrutinize the Applicants' claims regarding competition and impose conditions to address the unique impact the merger will have on consumers in Hawaii.

II. LEGAL FRAMEWORK

Under Sections 214 and 310(d) of the Communications Act,[1] the Commission is required to evaluate whether "the proposed transfers of control of licenses and authorizations . . . will serve the public interest, convenience and necessity."[2] Pursuant to this analysis, the Commission

[1] 47 U.S.C. §§ 214, 310(b).

[2] *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner*

considers whether the transaction "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes."[3] The Commission accordingly weighs "any potential public interest harms . . . against any potential public interest benefits."[4] The Applicants have the burden "of proving, by a preponderance of the evidence, that the proposed transaction on balance, serves the public interest."[5]

The public interest standard incorporates a "deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of information sources and services to the public, and generally managing the spectrum in the public interest."[6] Contrary to these objectives, this acquisition will not preserve or enhance competition or promote a diversity of license holdings, but will instead increase and enhance the dominance of the now independent parties, as a dominant combined entity in the Multichannel Video Programming Distributor ("MPVD") and broadband markets—particularly in Hawaii.

The Commission's "competitive analysis . . . forms an important part of the public interest evaluation" the Commission undertakes in its merger review and "is informed by

---

Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee, MB Docket No. 05-192, Memorandum Opinion & Order, 21 FCC Rcd 8203, ¶ 23 (2006) ("*Adelphia Order*").

3 *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion & Order, 26 FCC Rcd 4238, ¶ 22 (2011) ("*Comcast/NBCU Order*"); *Adelphia Order,* ¶ 23.

4 *Comcast/NBCU Order*, ¶ 22; *Adelphia Order*, ¶ 23.

5 *Comcast/NBCU Order*, ¶ 22; *Adelphia Order*, ¶ 23.

6 *Comcast/NBCU Order*, ¶ 23; *Adelphia Order*, ¶ 24.

traditional antitrust principles, but is not limited to them."[7] The Commission must, however, also consider "whether the transaction will accelerate the decline of market power by dominant firms in the relevant communications markets and the transaction's effect on future competition."[8] Under this competitive analysis, "the Commission considers whether a transaction will enhance, rather than merely preserve, existing competition."[9]

Further, if the Commission finds certain aspects of the proposed transaction harmful to the public interest, its broad authority under the public interest standard authorizes it to "impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served."[10] Unlike merger reviews conducted by the government's antitrust agencies, the Commission's "public interest authority enables it to rely upon its extensive regulatory and enforcement experience to impose and enforce conditions to ensure that a transaction will yield overall public interest benefits."[11]

The Commission's competitive analysis requires an examination of the Applicants' existing market power and the impact of the merger on that market power. Market power is typically defined as a firm's ability to exclude competition or control prices.[12] Precedent makes

---

[7] *Adelphia Order,* ¶ 25.

[8] *Id*.

[9] *Comcast/NBCU Order*, ¶ 24.

[10] *Adelphia Order*, ¶ 26, *citing Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, *et al*., Memorandum Opinion & Order, 19 FCC Rcd 21522, ¶ 43 (2004) (other citations omitted).

[11] *Id*.

[12] *See Comcast/NBCU Order*, ¶ 29 n.62, *citing* Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, § 1 (Aug. 19, 2010) (Horizontal Merger Guidelines)*; see also United States v. E.I. DuPont Nemours & Co.*, 351 U.S. 377, 389 (1956).

clear that the assessment of whether an entity has market power does not rest solely on market share, although high market share can be indicative of market power.[13]

The Commission's market power analysis begins "by defining the relevant product markets and relevant geographic markets" and then identify "market participants and examine market concentration," and "whether entry conditions are such that new competitors could likely enter and defeat any attempted post-merger price increase" and other anti-competitive behavior.[14]

III. RELEVANT MARKET ANALYSIS

The Commission's competitive analysis, consistent with recognized principles of antitrust law, examines the merger's impact on competition in relevant markets, including both the product market and geographic market.[15] Identifying the relevant markets allows the Commission to "determine the impact of the transactions on market participants and potential entrants" and evaluate whether the transactions "reduce the availability of substitute choices" available to consumers.[16] Under applicable precedent, a "relevant product market has been defined as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a 'small but significant and nontransitory' increase in price."[17]

---

13 *See United States v. General Dynamics Corp.*, 415 U.S. 486, 498 (1974); *see also AT&T Corp. v. FCC*, 236 F.3d 729, 736 (D.C. Cir. 2001).

14 *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion & Order, 20 FCC Rcd 18290, ¶ 21 (2005) ("*SBC/AT&T Merger Order*").

15 *Adelphia Order*, ¶¶ 59-60.

16 *Id*.

17 *SBC/AT&T Merger Order*, ¶ 21 n.83, *citing* Horizontal Merger Guidelines; *see also Application of Echostar Communications Corp. (a Nevada Corporation), General Motors*

The Commission analyzes the appropriate product market "from the perspective of customer demand."[18] The Commission has typically recognized that "competition depends on consumers having choices between products that are fairly good substitutes for each other."[19] In markets in which such choices exist, "a single provider cannot raise its prices above a 'competitive' level because consumers will switch to a substitute."[20]

Under these principles, a specific service or specific set of services represents a distinct product market if a hypothetical monopoly provider of those specific services could profitably sustain a non-transient, nontrivial price increase—that is, if the monopolist's profits after the price increase would exceed the monopolist's profits before the price increase.[21] If the price increase caused enough buyers to shift their purchases to a second product to render the increase unprofitable, then the second product should be considered to be part of the same product market. Moreover, absent a quantitative determination of whether two services are part of the same product market, courts have generally included products in the same market if they are "reasonably interchangeable" in their use.[22] Thus, where "one product is a reasonable substitute for the other in the eyes of consumers, it is to be included in the relevant product market."[23]

Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee), CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, ¶ 106 (2002) ("*Echostar*").

18 *SBC/AT&T Merger Order*, ¶ 83.

19 *Echostar*, ¶ 97.

20 *Id*.

21 Horizontal Merger Guidelines, § 4.1.1 (defining the hypothetical monopolist test as requiring that "a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products ("hypothetical monopolist") likely would impose at least a small but significant and non-transitory increase in price").

22 *Brown Shoe Co. v. United States,* 370 U.S. 294, 325 (1962).

23 *Echostar*, ¶ 106.

The principal product market at issue in the proposed transaction is MVPD service.[24] The Commission has, in past merger reviews in the video marketplace, examined both the distribution market and the programming market.[25] The combined entity will negatively impact competition in both markets because of its dominant position in the distribution market and the control of affiliated programming.[26] Because the Applicants are also significant providers of Broadband Internet access service,[27] the Commission should also examine the product market for Internet access, as well as the market for bundled video and broadband service.

A. Video Distribution

1. Product Market

The Commission has generally determined that the MVPD product market includes cable operators (such as Charter, TWC and Advance), DBS operators (such as Dish and DIRECTV), wireline telephone companies (such as Hawaiian Telcom) and overbuilders (such as Google Fiber). In previous merger orders, the Commission has rejected the argument that DBS and cable are not part of the same market.[28] But this analysis is not appropriate in Hawaii for two reasons.

First, Hawaii's remote location results in a weaker satellite signal, which increases DBS installation and service costs because larger dish receivers are required. In addition, rain fade problems are more prevalent in Hawaii due to the lower angle of the DBS satellites on the

---

24 *Adelphia Order*, ¶ 60.

25 *Id*.

26 Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations, MB Docket No. 15-149, at 55 & Appendices G & H (filed Jun. 25, 2015) ("Applications").

27 Applications at 45.

28 *Adelphia Order*, ¶¶ 62-63.

horizon. The higher density of Multiple Dwelling Units ("MDUs") in Hawaii also makes DBS less viable for a large percentage of households. This lack of substitutability is borne out by Hawaiian Telcom's own market analysis, and confirmed by reports from a leading market research firm, showing that Dish and DIRECTV together have a combined market share of only approximately 11.2 percent of the Honolulu Designated Market Area ("DMA"),[29] compared to a combined approximately 30 percent market share for Dish and DIRECTV in the rest of the U.S.[30]

Second, there is relatively small market for stand-alone video service. Today, the market is at a minimum a bundle of video and broadband. According to AT&T, approximately 78 percent of basic cable subscribers take another service in a bundle and that is typically broadband.[31] Currently, as AT&T acknowledges, satellite providers do not compete in the bundled market because they lack their own broadband offering.[32] This is consistent with Hawaiian Telcom's experience. Currently, approximately 93 percent of Hawaiian Telcom's video customers also subscribe to broadband, and Hawaiian Telcom generally focuses on selling

[29] TVB Research, ADS, Wired-Cable and Over-The-Air Penetration by Market (July 2015) (Nielsen Media Research, DMA Household Universe Estimates), *located at* http://www.tvb.org/research/184839/4729/ads_cable_market?ads_mkt=89, last viewed on October 2, 2015 ("July 2015 Nielsen Research").

[30] *See Annual Assessment of the Status of Competition in the market for the Delivery of Video Programming*, MB Docket No. 14-16, Sixteenth Report, 30 FCC Rcd 3253, ¶ 133, Table 7 (2015) ("*Sixteenth Video Competition Report*") (based on 2013 data)

[31] *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Declaration of Patrick T. Doyle, at ¶ 16 filed June 11, 2014) ("AT&T Doyle Decl.").

[32] *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Declaration of Lori M. Lee, at ¶ 22 (filed June 11, 2014) ("AT&T Lee Decl.").

a video/broadband bundle, not on selling stand-alone video.[33]

TWC has leveraged Hawaii's unique geography to establish a monopoly position serving approximately 76 percent of total households in the State of Hawaii, a much greater share than cable's nationwide share of approximately 54 percent of MVPD subscribers at the end of 2013 according to the FCC's *Sixteenth Video Competition Report*.[34]

Broadcast TV is also not a viable substitute in Hawaii. Over-the-air TV alone currently accounts for only approximately 6.1 percent of the households in the Honolulu DMA.[35] Hawaii's mountainous terrain makes it technically difficult and extremely costly to provide adequate over-the-air broadcast TV signals to Hawaii's consumers. In addition, the higher density of MDUs in Hawaii means that the placement of roof antennas is not an option. As a result, without subscribing to a wireline MVPD, a large percentage of Hawaii's residents are unable to obtain a full complement of the network TV stations—ABC, NBC, CBS, FOX, and PBS.

That leaves Hawaiian Telcom's video service, launched on Oahu in July 2011, as the most viable competitor. After four years, Hawaiian Telcom has approximately 31,000 customers in total or 7 percent of total homes in Hawaii (10 percent on Oahu). In contrast, the merged Charter/TWC/Advance will have over 17 million customers nationally. While the combined venture will become the third largest MVPD in the country, Hawaiian Telcom will have less than 0.3 percent of the nationwide end user subscribers. This lopsided national and local market power justifies imposition of conditions in the instant transaction.

---

[33] Declaration of Jason Fujita, ¶ 5 (Attached as Appendix B) ("Fujita Declaration").

[34] *Sixteenth Video Competition Report* at ¶ 25.

[35] July 2015 Nielsen Research.

2. Geographic Market

The Commission has conducted its competitive analysis of the video market using local markets.[36] This is critical to protecting competition in Hawaii where the island terrain poses unique challenges for the reception of MVPD service. The Applicants do not challenge the Commission's use of local markets for the Commission's analysis.[37]

B. Video Programming

The Commission has long distinguished between various types of video programming networks, generally recognizing a distinction between national and regional cable programming.[38]

Generally cable programming networks sell packages of programming to MVPDs which in turn pay license fees based on the MVPD's number of subscribers.[39] These license fees are typically subject to some negotiation, with programmers providing discounts based on an MVPD's number of subscribers.[40]

1. Vertical Public Interest Harms

Charter/TWC/Advance, which will be an MVPD for about 17 percent of the cable subscribers in the country (the third largest behind Comcast and AT&T/DIRECTTV), also will own or control popular national and local cable programming networks.[41] In previous cable mergers, the Commission recognized that the vertical integration of a cable company's'

---

36 *Adelphia Order*, ¶ 64.

37 Applications at 44.

38 *Adelphia Order*, ¶ 67.

39 *Id*. ¶ 65.

40 *Id*.

41 Applications at 55 & Appendices G and H.

programming assets with additional outlets for distribution (such as TWC's cable systems) would increase the likelihood of "various forms of vertical foreclosure and anticompetitive pricing" that can harm competition in the "MVPD and programming supply markets" and ultimately harm the public interest.[42] In the *Comcast/NBCU Order*, the Commission found that Comcast could use its "control over video programming to harm competing MVPDs by withholding content or raising programming prices."[43] The Commission has recognized that using this power, an MVPD can use anticompetitive practices to raise its rivals' costs or induce subscribers to switch to Charter's MVPD service.[44]

The Commission has already recognized the potential discriminatory conduct that would harm competing MVPDs when TWC was involved in a previous merger. In the *Adelphia Order*, the Commission concluded, among other things, that TWC's acquisition of various Adelphia cable systems, which increased TWC's market share to about 18 percent of nationwide MVPD customers, posed serious harm to the programming market, allowing the larger MVPD venture to discriminate in favor of its own MVPD systems with respect to the terms and conditions of its affiliated programming, such as Regional Sports Networks ("RSNs"). The Commission found that "even small increases in Comcast's and Time Warner's market shares may increase their incentives to increase the price of their RSNs uniformly."[45] Thus, in the *Adelphia Order* the Commission imposed conditions that (1) prohibited TWC from entering into an exclusive distribution arrangement with an affiliated RSN, (2) required TWC to provide nondiscriminatory access to competing MVPDs, and (3) subjected programming disputes to mandatory arbitration

---

[42] *Adelphia Order*, ¶¶ 115, 155.

[43] *Comcast/NBCU Order,* ¶¶ 28, 36-48.

[44] *Id*.

[45] *Adelphia Order*, ¶ 141.

over such terms and conditions, the results of which were reviewable by the Commission.[46]

a. Affiliated Programming

Regional Sports Network. TWC owns and controls OCSports, a RSN serving Hawaii. OCSports televises local sports programming, including University of Hawaii football and other intercollegiate athletics in which the University of Hawaii competes. Such programming is particularly important in Hawaii, because there are no national sports franchises located in Hawaii. Therefore, sports viewers demand access to local collegiate sports.[47] The inability of Hawaiian Telcom to offer such programming would significantly hobble it in the marketplace for MVPD subscriber loyalty, particularly because over-the-air TV is not a reliable alternative due to the geographic terrain in Hawaii.[48]

TWC already has leveraged its control of OCSports to raise Hawaiian Telcom's costs. Unlike other linear cable-owned RSNs, TWC in the past did not allow Hawaiian Telcom to resell commercial airtime for local advertising to other potential advertisers. This enabled TWC to leverage an unreasonable competitive advantage in the local advertising market, uniquely disadvantaging Hawaiian Telcom. In addition, the market power enabled TWC in the past to require Hawaiian Telcom to carry the RSN (OCSports) on Hawaiian Telcom's basic tier, which increased Hawaiian Telcom non-compensable costs and inhibited its free channel positioning and marketing efforts, a constraint that TWC does not face in Hawaii.[49] This unreasonable demand prevented Hawaiian Telcom from packaging and promoting its services the way in

---

[46] *Adelphia Order*, Appendix B, Remedies and Conditions, § B.

[47] Such devotion of sports fans to Hawaii collegiate sports is demonstrated by Oceanic TWC promotional materials which highlight such unique subscriber preferences. *See* Appendix A.

[48] *See* Fujita Declaration, ¶ 7; page 9, *supra*.

[49] *See* Fujita Declaration, ¶ 8.

which most cable TV operators can to maximize their marketing and recover the additional costs of including such programming in their video offerings.[50] This leverage will only increase with the addition of Charter/TWC/Advance's national programming assets. TWC continues to refuse to provide Hawaiian Telcom a long term contract for OCSports and will only negotiate a one year contract.

Other sports and local interest channels. In addition, Oceanic TWC produces and televises the OC16 channel,[51] which includes Hawaii high school sports, which are enormously popular in Hawaii. As Hawaiian Telcom has served customers, fielded customer inquiries, and conducted surveys of both potential and current customers and customers who have discontinued service, it has learned that a meaningful portion of those surveyed indicate that the inability to receive the OC16 channel and high school sports is a deciding factor for not subscribing to, being completely satisfied with, or disconnecting from Hawaiian Telcom video services. But unlike with University of Hawaii sports channel OCSports, TWC refuses entirely to allow Hawaiian Telcom to purchase OC16 programming at fair market rates, thus preventing Hawaiian Telcom from offering this highly valued programming to its customers.[52]

TWC also includes on its cable TV line-up other local program outlets NGN (Japanese cultural programming) and SURF (Hawaii surfing coverage).[53] Because Hawaiian Telcom is not allowed to air certain local interest channels including two out of the four NGN channels and the

---

50 It is true that Oceanic TWC ceased such demands, after Hawaiian Telcom raised concerns with Comcast's Application to acquire Time Warner Cable after it was filed with the Commission. Hawaiian Telcom strongly suspects that such capitulation was made to reduce regulatory controversy, and that such anticompetitive behavior can be expected to resume if the instant transaction is approved. *Id.*

51 http://oc16.tv.

52 *See* Fujita Declaration, ¶ 9.

53 Applications, Appendix G.

SURF channel, TWC is using its dominant position in the video distribution market to impede competition from Hawaiian Telcom. These high school sports and other local interest channels should be included in any programming access requirement adopted in this proceeding.[54]

National programming. The addition of national programming assets in which Advance owns and controls a large share also has a significant anti-competitive impact in obtaining "must have" national programming. Hawaiian Telcom needs reasonably priced access to “must have” Discovery programming such as The Discovery Channel, TLC, Animal Planet, and OWN, as well as others, which gives the combined Charter/TWC/Advance significant ability to discriminate against Hawaiian Telcom to the benefit of the combined entity's Hawaii MVPD operations.[55] The FCC lists both Discovery Channel and TLC as a top 20 cable-affiliated channel.[56] Discovery channels are viewed in the industry as "must have" programming by MVPDs.[57]

The FCC has emphasized that popular national programming affiliated with top-four cable providers provide a strong incentive for cable operators to discriminate in favor of their

---

[54] Fujita Declaration, ¶ 10.

[55] Advance has an attributable interest of over 32 percent in The Discovery family of channels (which has been found sufficient to afford control in a public traded corporation), which will be added to the Charter/TWC/Advance venture. Applications, Appendix H.

[56] *Revision of the Commission's Program Access Rules*, Report & Order, MB Docket Nos. 12-68, *et al*., Further Notice of Proposed Rulemaking, & Order on Reconsideration, 27 FCC Rcd 12605, Appendix F, Table 2 (2012) (“*2012 Program Access Order*”). The Discovery Channel was the sixth most viewed ad-supported cable channel in 2014. The Wrap, 50 Top Cable Entertainment Channels of 2014 – From USA to IFC, https://www.thewrap.com/from-usa-to-ifc-the-top-50-cable-entertainment-channels-of-2014/ (Dec. 23, 2014), last viewed on October 1, 2015. TLC is ranked 14th, Animal Planet, 24th, and OWN, 29th. Variety ranked by Discovery as 7th and TLC 18th as top primetime cable-delivered channels for the audiences age 18-49. Variety, ESPN No. 1 in Cable Ratings for 2014, http://variety.com/2015/tv/news/ratings-espn-tops-cable-for-year-own-hallmark-we-tv-among-few-gainers-1201391036/ (Jan. 2, 2015), last viewed October 1, 2015.

[57] *See* Fujita Declaration, ¶ 11.

affiliated programming, and against competing MVPDs. The Commission recognized that

> The record thus reflects that popular national programming networks, such as . . . . The Discovery Channel, among many others, in addition to premium programming networks, RSNs, and VOD networks, are affiliated with the four largest vertically integrated cable MSOs and that such programming networks are demanded by MVPD subscribers. . . . . the record shows that vertically integrated programming, if denied to cable's competitors, would adversely affect competition in the video distribution market.[58]

Although the FCC later refused to extend the nationwide ban on exclusive contracts between certain cable TV providers and affiliated programmers, it specifically indicated that there were some markets which showed an excessive market power by a cable TV operators.[59] Thus, it determined it would evaluate markets on a case-by-case basis to determine whether regulation was needed to protect MVPDs from such market power.

b. FCC remedy is required

Hawaii, where TWC has a 76 percent market share of video subscribers with no significant-sized rival, is remarkably similar to the geographic markets the Commission identified in the *2012 Program Access Order* as creating anticompetitive incentives that could justify an exclusivity ban, as well as share percentages experienced nationwide in earlier years that justified continuing the exclusivity ban.[60] As the Commission did in the *Comcast/NBCU*

---

[58] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Prohibition, Renewal of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket No. 07-29, *et seq*., Report & Order & Notice of Proposed Rulemaking, 22 FCC Rcd 17791, ¶ 37 ("*2007 Program Access Order*").

[59] *2012 Program Access Order,* ¶¶ 20-21.

[60] *Id.*, ¶¶ 17, 19 (exclusive contract ban extension justified based on 67 percent nationwide market share).

Order,[61] the Commission should impose conditions in this case to take these fact-specific issues into account.

Additionally, the *Adelphia* precedent should be applied to the instant merger and be applicable to the type of programming that is subject to anti-competitive conduct. Like TWC in the *Adelphia* transfers, Charter/TWC/Advance will increase the size of its MVPD customer base to about 17 percent, roughly the same size as TWC became in the *Adelphia* transfers.[62] The combination of Charter/TWC/Advance's programming assets with TWC will produce a particularly egregious anticompetitive result in the State of Hawaii given TWC's stranglehold on the MVPD market in Hawaii. Thus, the instant merger presents a new merger-specific vertical harm that the Commission must address. Because competitive impacts in the MVPD market must be viewed in a local geographic context, the unique market dominance of TWC of 76 percent of the Hawaii market, in addition to the increased power of the combined Charter/TWC/Advance entity, uniquely requires conditions to counteract potential competitive harm in Hawaii.

Hawaiian Telcom recognizes that the FCC has added a complaint mechanism to its rules that is designed to address MVPD access to RSNs and other "must have" programming.[63] However, the availability of a complaint process, which entails substantial costs and delays, will

---

[61] *Comcast/NBCU Order*, Appendix A, Conditions, §§ III, VII, VIII.

[62] The fact that TWC in *Adelphia* was becoming the second largest MVPD, and here Charter will become the third largest, is immaterial given the market power findings made by the Commission in the *Adelphia Order* and the roughly comparable size of the two combined entities.

[63] *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket No. 07-198, First Report & Order, 25 FCC Rcd 746, ¶ 46 (2010) ("*2010 Program Access Order*"), *aff'd in relevant part*, *Cablevision Systems Corp. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011).

not be of much use to a small MVPD like Hawaiian Telcom, which will be unable to sustain the delay and financial expenditures attendant to prosecuting such a complaint, particularly given the proclivity of large cable ventures to vigorously contest programming-related complaints at the Commission. Such costs and burdens are likely to outweigh Hawaiian Telcom's potential financial benefits resulting from a successful prosecution. If the Commission relies on its burdensome complaint procedures for Charter/TWC/Advance programming, Hawaiian Telcom will be relegated to second class citizenship, and robust video competition could not occur in Hawaii, which would contravene long held FCC video competition policies.

The Applicants seek to minimize the potential public interest harms. The fact that TWC will be combined with a nationwide cable and broadband provider will allow it to exert greater leverage to favor its owned and controlled programming affiliates, which risks anticompetitive conduct and pricing toward much smaller competitors, such as Hawaiian Telcom. Thus, the merger poses a potential threat to competition that is specific to the merger and credible based on Oceanic TWC's past treatment of Hawaiian Telcom in the programming market.

2. Horizontal Public Interest Harms

TWC already enjoys significant discounts on video programming when obtaining programming from unaffiliated content providers. Smaller competitors, such as Hawaiian Telcom, pay significantly more for the same programming. Even large buyers of video programming such as AT&T before it purchased DIRECTV, paid far more than its chief rivals (Comcast and TWC) for the same programming. Pre-DIRECTV -merger AT&T admitted that with nearly 6 million video subscribers it could not compete with Comcast and TWC, stating that "U-verse video service lacks, and cannot achieve, the critical scale and value necessary for AT&T to negotiate for programming at costs that are competitive with . . . Comcast and

T[WC].”[64] AT&T stated that its “content costs per subscriber" are significantly higher than those of either Comcast or TWC.[65] The Charter/TWC/Advance entity will undoubtedly command similar cost advantages. Although AT&T's programming prices may have changed under the combined AT&T/DIRECTV, its previous experience, as a relatively small MVPD (though much larger than Hawaiian Telcom), provides good evidence of the potential discrimination to be expected from a Charter/TWC/Advance combination against its much smaller rivals.

AT&T stated that programming costs account for a very large percentage of its variable recurring cost and video revenues.[66] Programming accounts for *****BEGIN HIGHLY CONFIDENTIAL END HIGHLY CONFIDENTIAL***** of Hawaiian Telcom’s video revenues.[67] While Hawaiian Telcom purchases programming through cooperatives, these cooperatives still purchase at lower volumes than AT&T and, of course, the proposed Charter/TWC/Advance combination. Hawaiian Telcom, with far fewer subscribers than pre-DIRECTV-merger AT&T, is thus at even greater risk of anti-competitive pricing by Charter/TWC/Advance.

The substantial increase in video subscribers through the combination[68] will dramatically increase TWC's and Charter’s market power to demand even larger discounts in the market for video programming. The aggregation of this buying power in a single entity creates monopsony

---

64 AT&T/DIRECTV Applications, Public Interest Statement at 23-24.

65 AT&T Lee Decl., ¶ 20.

66 *Id*., ¶ 18.

67 Fujita Declaration, ¶ 12.

68 Applications at 7-12, 54-55.

power—"a buyer's monopoly."[69] With its monopsony power in the Hawaii market (which represents 76 percent of video subscribers) in programming acquisition unchecked, the combined company would have a natural incentive to exploit its increased cost differential over smaller MVPDs by engaging in predatory pricing, reducing its prices in markets where it faces competition, in order to drive its competitors out of the market, while maintaining prices (and thereby profits) in markets where it faces less or no competition. Once competition is eliminated or neutralized, the combined company is then free to raise prices without fear of losing subscribers to competitors. This is even more problematic in markets such as Hawaii, where DBS is not a significant competitor and the challenging terrain make the already costly deployment of video and broadband distribution facilities impossible for any company that lacks significant communications network facilities. The continued existence of smaller providers is the only thing that forces dominant providers such as Charter and TWC to charge below-monopoly prices, and such market power is not in the long-term public interest. Because deploying network facilities for broadband and video involve huge sunk costs, if Hawaiian Telcom and other small providers that compete with the merged company are driven out of the market, they will not be replaced by new entrants.

Charter states that there are no concerns with its buying power in either the national or local market for video programming.[70] But Charter's argument fails to recognize that its overwhelmingly large size nationally, and particularly in Hawaii, enables it to use its market power to command significant and discriminatory discounts based on market power that have no economic rationale based on efficiency. This is especially true in Hawaii where the merged

---

69 *See Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, 549 U.S. 312, 320 (2007).

70 *See* Applications at 56-58.

Charter/TWC/Advance can selectively reduce prices to drive competition out of the market.

Market-based evidence, including markets served by TWC and Charter, demonstrates that companies price aggressively only in markets where they face a wireline-based competitor such as a telephone company or overbuilder.[71] It is only in markets where Charter/TWC/Advance faces such competition that it offers low prices, low-end packages that include broadcast stations and a few select desirable channels. In other places, a dominant MVPD will compel customers to take a larger package of channels at much higher prices. Post-merger, and after obtaining even further programming discounts, the combined Charter will inevitably selectively pass on its cost savings in the short run solely to drive out competition in competitive markets and then raise rates everywhere.

Charter's application suggests that increased market power will not result in lower programming costs for unaffiliated programming.[72] But the natural incentive of every company is to maximize profit. If programmers must increase the discount they provide to the combined entity, it is only natural that they would look for places to recoup all or part of their money, such as from MVPDs that lack the bargaining clout accumulated by the merged Charter/TWC/Advance. And even if program providers can foresee that increasing the pricing gap between Charter/TWC/Advance and smaller competitors may not be in their collective long-term interest, because program providers cannot act collectively, each individual provider will be forced to maximize their revenues by discriminating between larger and smaller providers.

---

[71] United States General Accounting Office, *Wire-Based Competition Benefited Consumers in Selected Markets*, Report to the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, GA0-04-241, at 16, Figure 4 (Feb. 2004).

[72] Applications at 54-58.

3. Programming Market Remedies

An unconstrained merger among Charter, TWC, and Advance threatens the continued beneficial existence of smaller providers and is therefore contrary to the public interest. In order to prevent the public interest harms associated with the merged Charter/TWC/Advance's anticompetitive buying power, the Commission should impose the following conditions on approval of the application, related to the merged Charter/TWC/Advance's market power with regard to programming:

- Establish access to RSNs under the *Adelphia* rule for five years;
- Require continued access by unaffiliated MVPDs in Hawaii to RSN networks and all University of Hawaii sports through long term contracts in accordance with current terms and conditions;
- Prohibit exclusive programming content arrangements by affiliated programmers that carry any amateur Hawaii high school sports and require Charter/TWC/Advance to provide nonaffiliated MVPDs in Hawaii with access to amateur Hawaii high school sports on a live basis at fair market rates and conditions, subject to compulsory arbitration;
- Prohibit exclusive programming content arrangements with non-affiliated and affiliated MVPDs, and ensure that MVPDs in Hawaii have access to, "must have" programming, such as Discovery Communications Inc. programming (e.g., Discovery, TLC, Animal Planet, OWN) at fair market rates and conditions, subject to compulsory arbitration; and
- Prohibit exclusive programming content arrangements between affiliated MVPDs and affiliated local programmers, including Oceanic SURF channel, all NGN programming, and provide nonaffiliated MVPDs in Hawaii with access to such programming at fair market rates and conditions, subject to compulsory arbitration.

C. Broadband Internet Access Market

The Commission has recognized that residential "high-speed Internet access services" is a relevant product market.[73] Similar to its analysis of MVPD service, the geographic market is local since a "customer's choice of broadband Internet access provider is limited to those companies that offer high-speed Internet access services in his or her area."[74] The Applicants do not contest either the product or geographic market definition.[75]

In Hawaii, TWC has also leveraged its dominance in the video market to extend its dominance to the broadband market, which is demonstrated by the preference of consumers to buy video and broadband in a bundle. Thus, TWC in Hawaii has approximately a 69 percent share of the consumer broadband market. In comparison, Hawaiian Telcom has approximately a 25 percent consumer market share with approximately another 6 percent of customers served by other providers.[76] Nationally, Charter/TWC/Advance will rocket to second place with 19.4 million nationwide wireline Internet customers, which represents 21 percent of wireline broadband customers.[77] Because TWC uses the same connection to provide both video and broadband, the following market harms impact competition in both markets.

1. Market Harms Associated with Broadband Market Power

Charter/TWC/Advance's significant market power in the broadband market poses several public interest harms. First, Charter/TWC/Advance's dominant market position in the Hawaii broadband market and Charter's national footprint could also increase the combined entity's

---

73 *Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors to AT&T Comcast Corp., Transferee* MB Docket No. 02-70, Memorandum Opinion & Order, 17 FCC Rcd 23246, ¶ 128 (2002) *aff'd sub nom. Consumer Fed'n of Am v. FCC*, 348 F.3d 1009 (D.C. Cir. 2003) ("*Comcast/AT&T Broadband Order*").

74 *Id*.

75 Applications at 44.

76 Fujita Declaration, ¶ 13.

77 Applications at 6, 44-45.

ability to expand current, and form new, exclusive contracts with installation and construction contractors in Hawaii, whose availability in Hawaii is already limited. This would impede Hawaiian Telcom's ability to timely expand its fiber optic network and delay its customer installations. At the same time it would provide Charter/TWC/Advance additional time to sweeten its retention offers.

Second, the combined entity can be expected to exacerbate current Hawaii market issues associated with TWC tying up MDUs for the provision of video and broadband services. TWC has entered into a wide variety of arrangements with MDUs, such as revenue sharing arrangements, one-time incentive payments, as well as entering into exclusive marketing contracts. The FCC has already banned exclusive agreements for delivery of video programming to MDU residential consumers.[78]

Third, Charter/TWC/Advance will gain significant market influence for wired broadband and video equipment and applications—both for use in the core network as well as in the home, such as for as DOCSIS 3.1 and TV Everywhere-intensive offerings. The combined power of TWC's local dominance in Hawaii and Charter's national presence will increase the ability of combined Charter/TWC/Advance to enter into exclusive arrangements with content, software and hardware providers. These anticompetitive motives would restrict Hawaiian Telcom's access to critical cutting-edge features of video and broadband services that customers demand.

---

[78] 47 C.F.R. § 76.2000. *See also Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments,* MB Docket No. 07-51, Report & Order & Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, ¶¶ 1-2, 7, 30 (2007) ("*MDU Order & FNPRM*"), *aff'd sub nom. Nat'l Cable & Television Ass'n v. FCC,* 567 F.3d 659 (2009). Although the FCC has permitted bulk billing and exclusive marketing agreements for video distribution offerings, other anti-competitive practices TWC engages in Hawaii have never been ruled on by the Commission.

2. Broadband Internet Access and Video Market Remedies

As with its proposal regarding video programming, Hawaiian Telcom urges the Commission only to grant the Applications subject to the following conditions related to the merged Charter/TWC/Advance's market power in the video and broadband Internet access market.

- Disallow exclusive contracts with installation and construction contractors and equipment vendors for video services and broadband services, including access to emerging technology equipment that is critical to effective competition;
- Disallow use of revenue shares, one-time incentive payments, exclusive marketing agreements impacting competitive video and broadband providers' ability to compete in bulk buildings/MDU space; and
- Ensure that the merged Charter/TWC/Advance does not prevent third party hardware and software providers from offering non-discriminatory prices and terms to other competitors.

IV. CONCLUSION

The Charter/TWC/Advance merger will further stifle competition and harm Hawaiian Telcom and other competitors in the video programming and wired broadband markets in Hawaii unless conditions are imposed. TWC already holds monopoly shares in both video and wired broadband markets in Hawaii. The merger would increase TWC's market power and is likely to exacerbate TWC's existing anticompetitive behavior in Hawaii. Thus, Hawaiian Telcom strongly urges the Commission to only approve the transactions with conditions that, consistent with the recommendations outlined in these comments, address the anti-competitive concerns.

Respectfully submitted,

By: *<u>/s/ Gregory J. Vogt</u>*

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
103 Black Mountain Ave., Suite 11
Black Mountain, NC 28611
(828) 669-2099
gvogt@vogtlawfirm.com

Counsel for Hawaiian Telcom Services Company, Inc.

Steven P. Golden
Vice President External Affairs
Hawaiian Telcom Services Company, Inc.
1177 Bishop Street
Honolulu, Hawaii 96813

October 13, 2015

Appendix A

#GameOn

OUR TEAM, HAWAII'S TEAM

Today's multi-media landscape has brought on monumental behavioral changes with viewers becoming more passionate with program choices and selective in their viewing device. Emerging technologies, changing family dynamics, competitive social activities and higher value expectations have created a gentle battle for the attention of your customer.

University of Hawaii Sports on OC Sports is the one programming attraction that has remained "constant" in its ability to deliver a passionate, quality audience.

There is no professional sports franchise in Hawaii, and University of Hawaii athletics is the highest form of sports entertainment in Hawaii. OC Sports has become the gathering place where people from all social and economic bases come together to watch University of Hawaii Sports.

We support our "home team" with pride and a faithful belief that we can compete at a higher level.

It is our relationship with the individual student athletes in their chosen sports that creates a deep-rooted bond with "Hawaii's team" and makes each live event televised by OC Sports a community- connected experience unlike any other in the market.

This is University of Hawaii Sports!

REDACTED – FOR PUBLIC INSPECTION

2014-2015 SEASON RECAP

	RECORD	NATIONAL RANKING	POST SEASON
WARRIOR FOOTBALL	4-9		
WAHINE VOLLEYBALL	22-7	#23	NCAA VOLLEYBALL 1ST ROUND
SOCCER	7-10-1		
WARRIOR BASKETBALL	22-13		BIG WEST CONFERENCE FINALS - 2ND
WAHINE BASKETBALL	23-9	BIG WEST CHAMPIONS	Women's NIT
WARRIOR VOLLEYBALL	24-7	#1	MPSF Mountain Pacific Sports Federation; NCAA VOLLEYBALL
SAND VOLLEYBALL	18-3	#2	NCAA TM
BASEBALL	21-32		
SOFTBALL	32-22		

		Persons	%	Index
Total		413,185	100	100
Gender	Male	233,373	56.5	113
	Female	179,812	43.5	87
Marital Status	Married	203,478	49.2	103
	Single (Never Married)	137,824	33.4	94
	Separated/Divorced/Widowed	71,883	17.4	105
Age	18-24	34,203	8.3	69
	25-34	63,765	15.4	87
	35-44	53,390	12.9	80
	45-54	85,838	20.8	122
	55-64	72,661	17.6	104
	65 +	103,328	25.0	124
Income	$20-$34,999	56,424	13.7	94
	$35-$49,999	61,905	15.0	89
	$50-$74,999	63,714	15.4	83
	$75-$99,999	87,326	21.1	112
	$100-$149,999	61,884	15.0	109
	$150-$250,000+	40,473	9.8	220
Occupation	White Collar	154,463	37.4	92
	Retired	104,156	25.2	128
	Blue Collar	89,371	21.6	95
	Professional & Related Occupatns.	56,079	13.6	100
	Sales And Office	50,049	12.1	85
	Mgmnt, Business & Financial Ops.	48,335	11.7	91
	Service	43,028	10.4	86
	Productn, Transprtn & Material Moving	21,144	5.1	135
	Construction, Extraction/Maintenance	16,092	3.9	110
Education	High School Grad.	126,611	30.6	89
	Some College (No Degree)	155,543	37.6	111
	College Graduate (4 Yrs +)	69,589	16.8	103
	Post Graduate Degree	36,342	8.8	102
Children	None	286,179	69.3	107
	1	55,111	13.3	86
	2	37,686	9.1	87
	3+	34,209	8.3	88
TV Programs	Sports	284,033	68.7	163
	Movies	269,623	65.3	103
	Comedies	221,966	53.7	104
	Documentaries	182,494	44.2	107
	Dramas	170,234	41.2	100
	Mystery/Suspense/Crime	164,504	39.8	103
Leisure Activities	Volunteer Work	150,918	36.5	109
	Swimming	140,554	34.0	78
	Jogging-Running	106,982	25.9	85
	Hiking-Backpacking	98,104	23.7	81
	Fishing	80,847	19.6	117
	Bicycling	76,387	18.5	80
	Photography	69,695	16.9	86
Household Size	1	45,287	11.0	107
	2	111,771	27.1	89
	3	95,225	23.0	116
	4+	160,902	38.9	99

		Persons	%	Index
Residence	Own	274,355	66.4	111
	Rent	119,389	28.9	83
Restaurant	Any Restaurant Used Past Mo.	369,126	89.3	96
	Any Quick Servc Rstrnt Pst Mo.	354,670	85.8	99
	Any Sit-Down Rstrnt Pst Mo.	312,491	75.6	99
Purchase Interests	Mattress	32,703	7.9	81
	High-Definition Television (HDTV)	25,503	6.2	128
	Furniture	23,889	5.8	62
	Solar Panels	23,668	5.7	108
	Major Appliance	22,007	5.3	89
	Wireless/Cell Phone Service	15,725	3.8	177
	Home Security System	14,624	3.5	123
Service/ Possession	Wireless/Cell Phone Service	383,683	92.9	100
	High-Definition Television (HDTV)	336,453	81.4	109
	Digital Camera	232,161	56.2	99
	Construction On Primary Home	203,070	49.1	112
	Digital Video Recorder	174,116	42.1	105
	Video Game System	137,888	33.4	100
	Energy Saving Appliance	135,306	32.7	110
Vehicle Purchase	New	260,129	63.0	114
	Used	203,891	49.3	89
	Leased	24,427	5.9	107
Internet Use	Search Engines	308,215	74.6	97
	Social Networkng	233,514	56.5	95
	Banking	176,934	42.8	98
	Maps/GPS	176,161	42.6	92
	Instant Messaging	168,201	40.7	95
	Find A Business Address/Phone Number	159,200	38.5	92
	Travel Reservations	158,079	38.3	127
Computer Ownership	Yes	374,558	90.7	99
	No	38,627	9.3	112
Ethnicity	Asian	180,009	43.6	108
	White	104,776	25.4	74
	Native Hawaiian/Pacific Islander	86,064	20.8	133
	Other	28,825	7.0	103
	African American	13,484	3.3	110

Honolulu, HI-Syndicated, Oct 13-Sept14, Scarborough

What Sports Fans Watch

		Persons	%	Index
1	Superbowl	312,533	67.5	157
2	NFL Playoffs	278,092	60.0	177
3	Other Regular Season NFL	272,512	58.8	172
4	Monday Night Football	269,592	58.2	161
5	Sunday Night Football	247,683	53.5	168
6	Olympics	231,841	50.1	133
7	University of Hawaii Women's Volleyball	210,226	45.4	178
8	University of Hawaii Football	198,985	43.0	175
9	MLB Playoffs	198,235	42.8	176
10	Bowl Games	182,430	3.4	184
11	Regular Season MLB	177,393	38.3	177
12	NBA Playoffs	174,292	37.6	158
13	University of Hawaii Men's Volleyball	174,065	37.6	189
15	Other Regular Season College Football	167,069	36.1	185
17	University of Hawaii Basketball	166,451	35.9	175

Season Viewership

Hawai'i Digital Households

	Warrior Football				Wahine Volleyball		Warrior Volleyball	
	506,330				864,662		341,185	
	Pay Per View	CBS Sports	ESPNU	Retels	OC Sports	Retels	OC Sports	Retels
# of Games	8	3	1	147	18	399	10	188
2014-2015 Total Gross Reach	7,584	29,860	21,624	2,275	16,039	1,444	10,016	1,282

2014-2015 OC Sports VIEWERSHIP

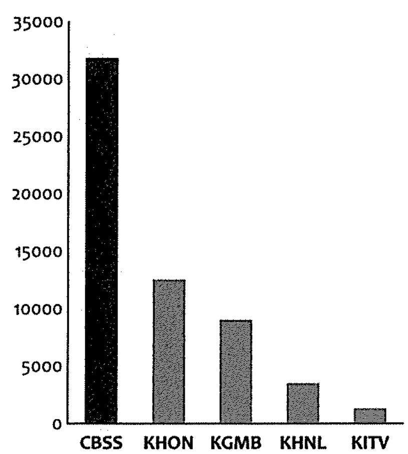
Programming Comparison By Sport

Digital Settop Boxes

Kantar Media Audiences 2015. Unique digital reach of settop boxes that viewed for at least 15 minutes during their respective time periods on the specified dates. All networks include HD audiences.

WARRIOR FOOTBALL

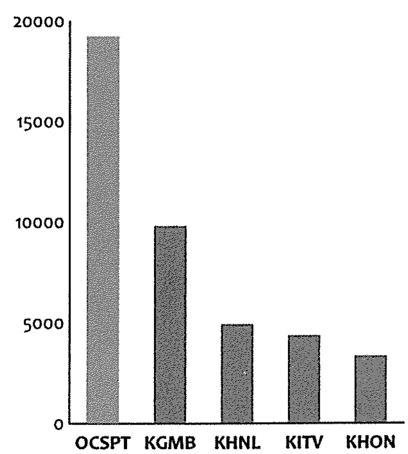
University of Hawaii vs. Oregon State
Saturday, September 6, 2014
from 4:30p-8:00p



Network	Program Name
CBSS	Warrior Football
KHON	6 PM Evening News
KGMB	5 PM Evening News
KHNL	5 PM Evening News
KITV	6 PM Evening News

WAHINE VOLLEYBALL

University of Hawaii vs. University of Oregon
Friday, September 5, 2014
from 7:30p-9:30p



Network	Program Name
OCSPT	Wahine Volleyball
KGMB	Hawaii Five-0
KHNL	Dateline
KITV	Shark Tank
KHON	Bones

REDACTED – FOR PUBLIC INSPECTION

Warrior Basketball

369,593

OC Sports	Retels
14	207
12,094	968

Wahine Basketball

422,244

OC Sports	Retels
9	227
8,958	1,505

Wahine Softball

53,501

OC Sports	Retels
4	16
8,444	1,233

Baseball

234,290

OC Sports	Retels
18	98
7,904	1,020

Soccer

5,764

OC Sports	Retels
2	6
1,619	421

Kantar Media Audiences 2014-2015 & CISCO 2014-2015. Hawaii digital boxes that tuned into these events above.
*Retelecasts from 8-29-2014 to 5-10-2015 with projections through the end of the sports season. Data is representative of digital household universe (66%). Analog households are not represented (34%).

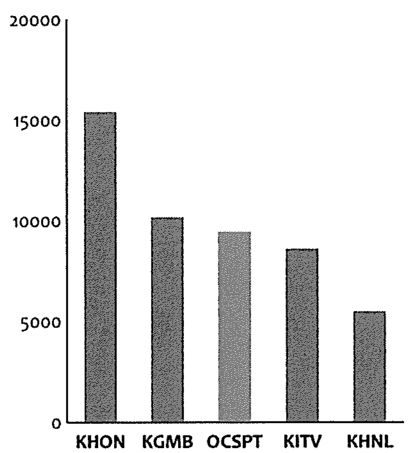
Grand Total Viewership:

6,737,829

Total Live Games	90
Total Repeats	2,128
Total Live Reach	982,962
Total Repeat Reach	2,170,721
Total OC Sports Enhanced 13/1013	3,563,626
Total OC Sports.tv Mobile Live Stream	13,520

WAHINE BASKETBALL

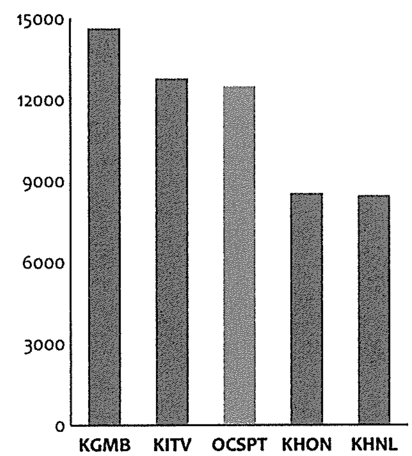
University of Hawaii vs. Cal State Fullerton
Saturday, March 7, 2015
from 5:00p-7:00p



Network	Program Name
KHON	6 PM Evening News
KGMB	5 PM Evening News
OCSPT	Wahine Basketball
KITV	6 PM Evening News
KHNL	5 PM Evening News

WARRIOR VOLLEYBALL

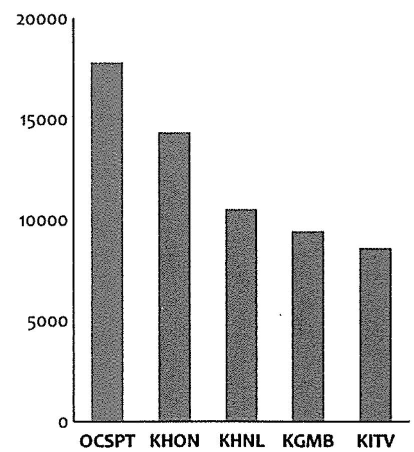
University of Hawaii vs. Pepperdine
Friday, March 6, 2015
from 7:00p-9:00p



Network	Program Name
KGMB	The Amazing Race
KITV	Shark Tank
OCSPT	Warrior Volleyball
KHON	Glee
KHNL	Dateline NBC

WARRIOR BASKETBALL

University of Hawaii vs. UC Irvine
Saturday, January 24, 2015
from 7:00p-9:00p



Network	Program Name
OCSPT	Warrior Basketball
KHON	Movie: The Eye
KHNL	US Championship Figure Skating
KGMB	CSI
KITV	Movie: Mirror Mirror

OC SPORTS ENHANCED

AAF Pele Award winning OC Sports Enhanced is an innovative on-demand 24/7 platform where viewers can access clips and highlights from all televised University of Hawai'i and local high school sporting events.

OC Sports Enhanced Channel Stats

427,292 Unique Set Top Boxes Reached

3,563,626 Visits

296,968 Average Visits Per Month

OCSports Enhanced Suite

Complimentary to the content shown on the OC Sports channel, viewers can access OC Sports Enhanced content with their remote on Digital Channels 15 & 1015.

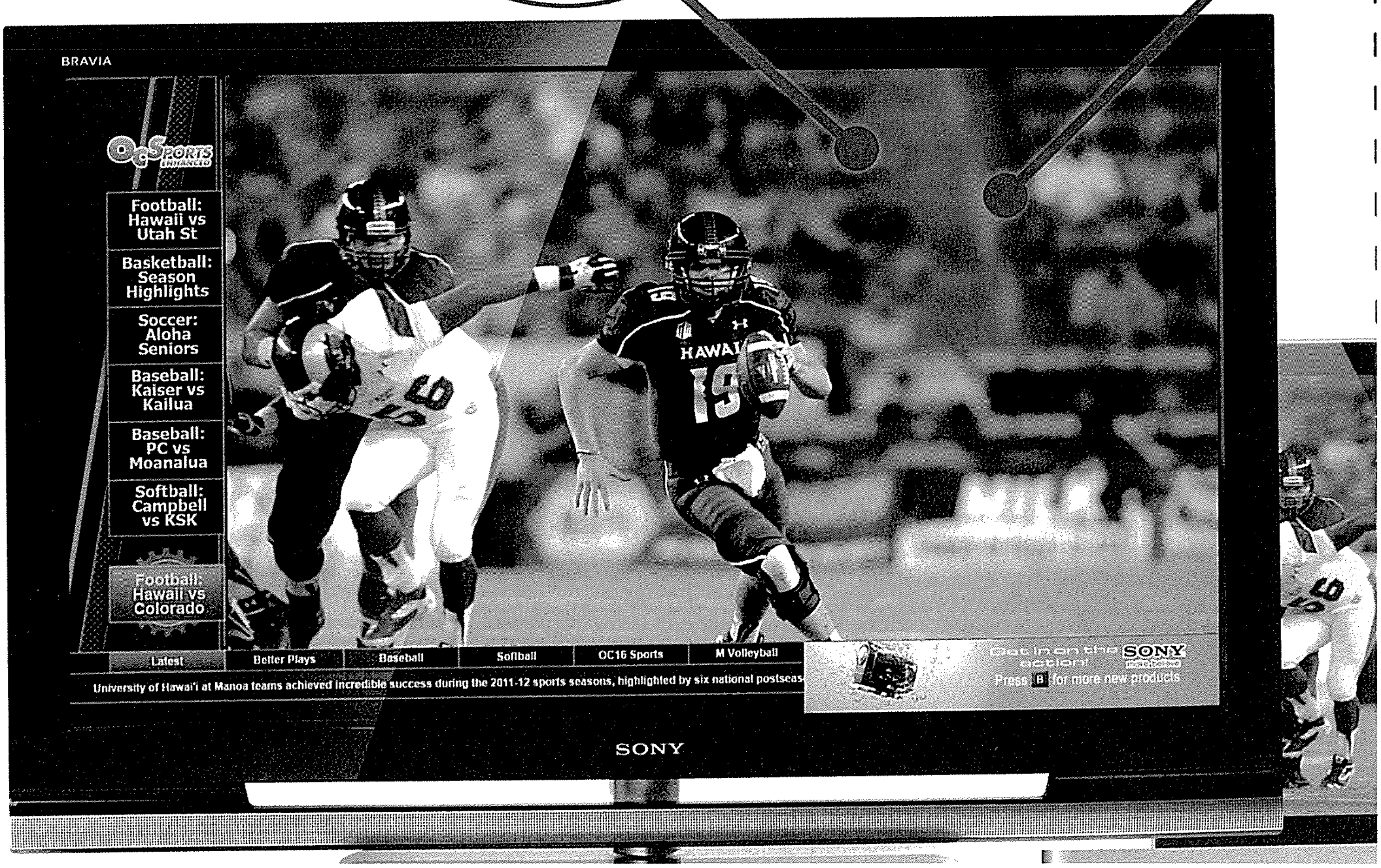
ver 2.0

- Animated lower 3rd banner
- Animated vertical banner
- Spots in live and retelecast events

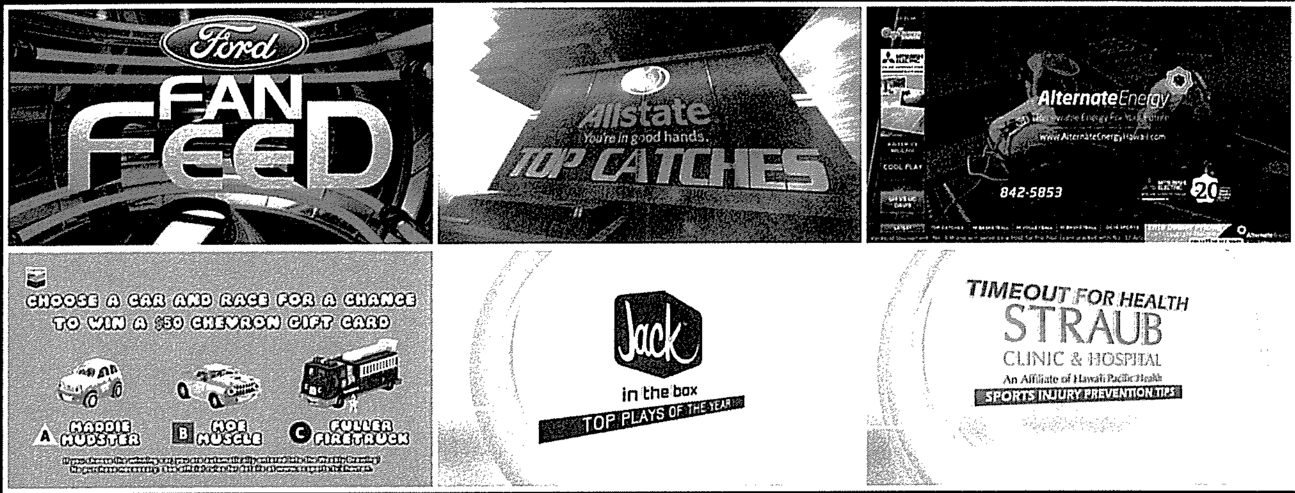
Digital Sponsor Opportunities

Cost - $25,000

- Original long form features
- Media skin and pre-roll bundle



ENHANCED FEATURE EXAMPLES



OCSports.tv Suite

Users can now watch OC Sports Enhanced original and long-form content directly from their computer or laptop.

ver 2.0

- Rotating banner on home menu screen

ver 1.0

- Shared rotating banner (logo) on home menu screen

Digital Sponsor Opportunities
Cost: $15,000

- Media skin and pre-roll bundle

OCSports.tv Stats

29,790 Total Unique Visitors
4,965 Monthly Visitors
51,850 Total Page Views
8,641 Monthly Page Views

Oceanic TV Mobile Suite

OC Sports Enhanced and OC16 are now available on iPad, iPhone, and Android devices through 3G, 4G, and Wi-Fi Connections.

ver 2.0

- Rotating banner on home menu screen
- Selected in-game feature segments on-demand

ver 1.0

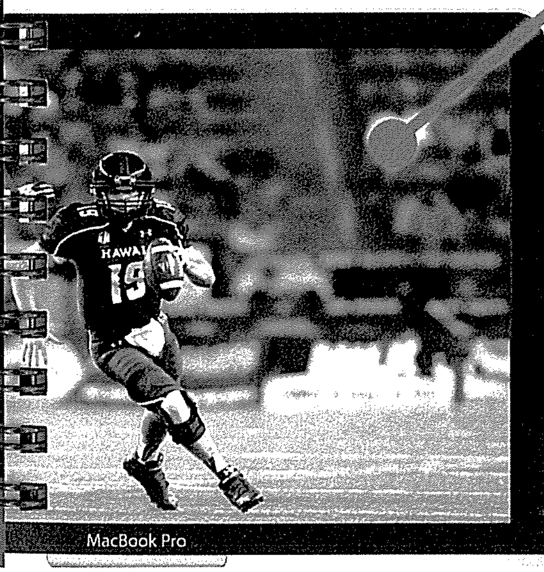
- Shared rotating banner (logo) on home menu screen

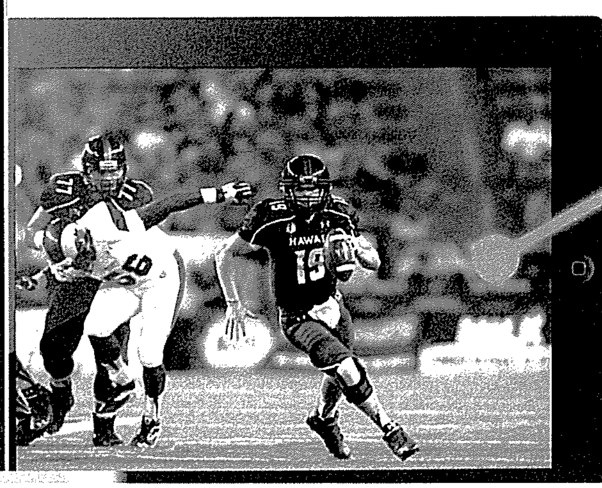
Digital Sponsor Opportunities
Cost: $15,000

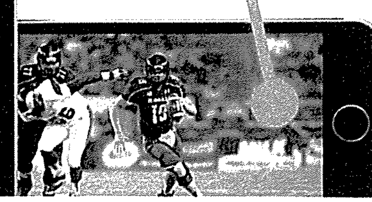
- Media skin and pre-roll bundle

Oceanic TV Mobile App

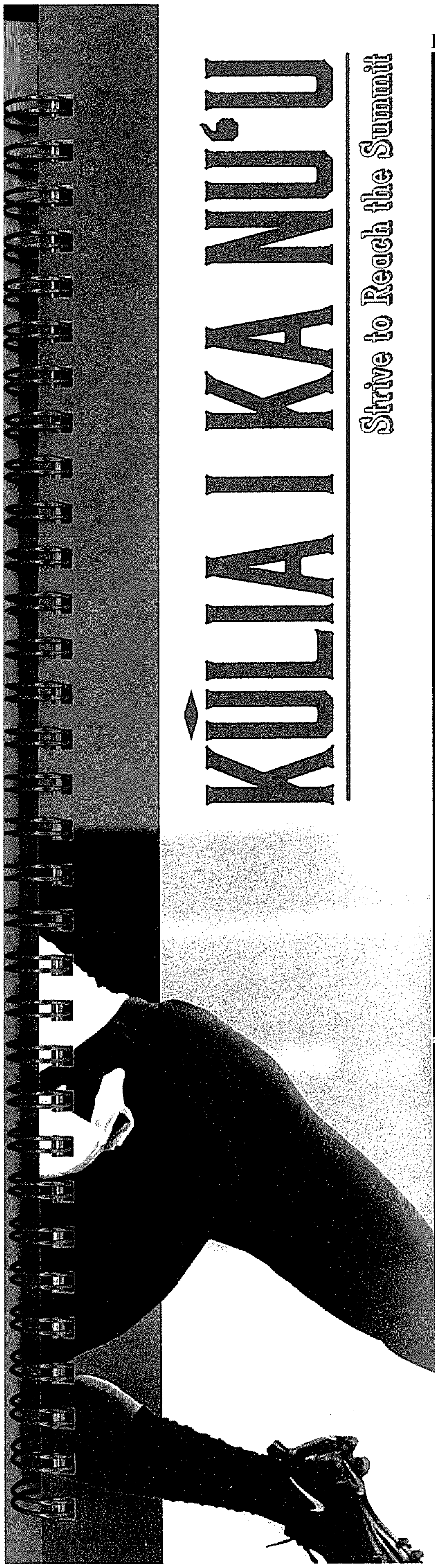
25,900 IOS downloads
6,038 Android downloads







REDACTED – FOR PUBLIC INSPECTION



UH Athletics Spots

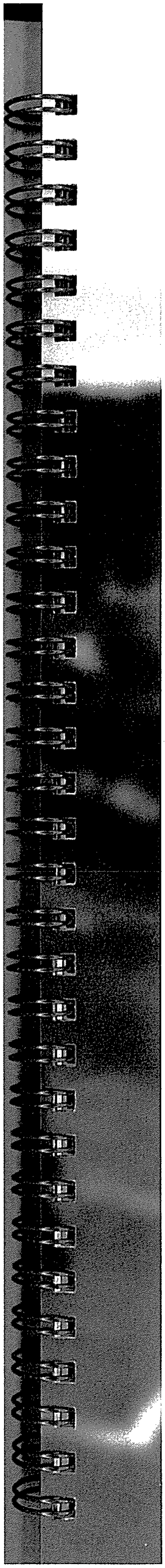
SPORT		Events	Spots Per Game
WAHINE SOCCER	Live	2	1
	Retelecast	4	1
	OC Sports Enhanced	6	1
WAHINE VOLLEYBALL	Live	18	3
	Retelecast	36	3
	OC Sports Enhanced	54	3
WARRIOR FOOTBALL	Live - OC Sports	8	2
	Live - Network	4	1
	Retelecast	16	2
	OC Sports Enhanced	24	2
WARRIOR BASKETBALL	Live	14	3
	Retelecast	28	3
	Diamond Head Classic ESPN	10	1
	OC Sports Enhanced	42	3
WAHINE BASKETBALL	Live	8	2
	Retelecast	16	2
	OC Sports Enhanced	24	2
WARRIOR VOLLEYBALL	Live	10	2
	Retelecast	20	2
	OC Sports Enhanced	30	2
WARRIOR BASEBALL	Live	18	3
	Retelecast	36	3
	OC Sports Enhanced	54	3
WAHINE SOFTBALL	Live	9	3
	Retelecast	18	3
	OC Sports Enhanced	27	3
SAND VOLLEYBALL	Live	3	2
	Retelecast	6	2
	OC Sports Enhanced	9	2
OC Sports Pre/Post Game Show	1x in pre & post = 2x total	70	2
SUMMER SESSION	14x/week x 13 weeks	182	1
	OC Sports Enhanced	182	1
	Total:	**988**	**1940**

Additional Elements

OC Sports Enhanced Suite ver 2.0	(see OC Sports Enhanced)
Oceanic TV Mobile Suite ver 2.0	(see OC Sports Enhanced)
OCSports.tv Suite ver 2.0	(see OC Sports Enhanced)
OC16 High School Sports Live (selected sports)	40
OC16 High School Sports Retelecast	40
OC Sports Enhanced Promos (shared logo)	min. 240x
Save Our Sports HHSAA Promo (shared logo)	min. 360x
"OC Sports - UH Supporter" Promo (shared logo)	min. 500x
6 Tickets to all applicable regular season UH events	
2 Parking Passes (Football, Volleyball, Basketball, Baseball)	
Total Value	$745,000
OC Sports Investment	$189,200
Save Our Sports HHSAA Donation*	$2,000
Total Investment:	**$191,200**

Optional VIP Post Season Contingency Budget: $15,000

*Package sponsor contributes $2,000 directly to HHSAA in support of the Save Our Sports program.
Note: All events and schedules subject to change.



REDACTED – FOR PUBLIC INSPECTION

PO'OKELA Champion

	SPORT		Events	Spots Per Game
UH Athletics Spots	WAHINE SOCCER	Live	2	1
		Retelecast	4	1
		OC Sports Enhanced	6	1
	WAHINE VOLLEYBALL	Live	18	2
		Retelecast	36	2
		OC Sports Enhanced	54	2
	WARRIOR FOOTBALL	Live - OC Sports	8	1
		Live - Network	4	1
		Retelecast	16	1
		OC Sports Enhanced	24	1
	WARRIOR BASKETBALL	Live	14	2
		Retelecast	28	2
		Diamond Head Classic ESPN	10	1
		OC Sports Enhanced	42	2
	WAHINE BASKETBALL	Live	8	2
		Retelecast	16	2
		OC Sports Enhanced	24	2
	WARRIOR VOLLEYBALL	Live	10	2
		Retelecast	20	2
		OC Sports Enhanced	30	2
	WARRIOR BASEBALL	Live	18	2
		Retelecast	36	2
		OC Sports Enhanced	54	2
	WAHINE SOFTBALL	Live	9	1
		Retelecast	18	1
		OC Sports Enhanced	27	1
	SAND VOLLEYBALL	Live	3	2
		Retelecast	6	2
		OC Sports Enhanced	9	2
	OC Sports Pre/Post Game Show	1x in pre & post = 2x total	70	1
	SUMMER SESSION	14x/week x 13 weeks	182	1
		OC Sports Enhanced	182	1
		Total:	**988**	**1414**

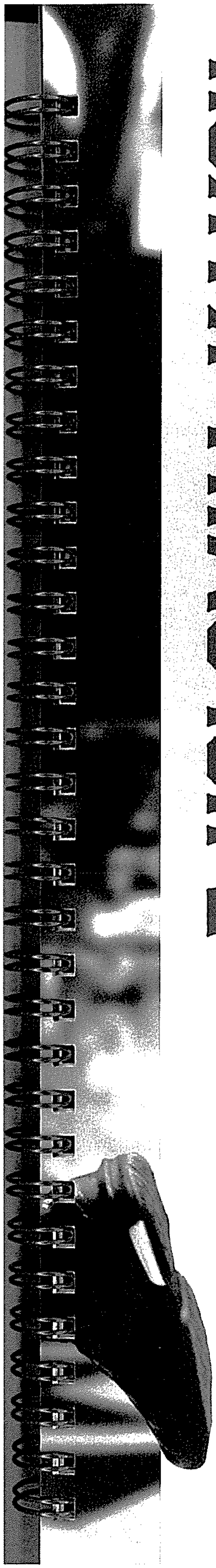
Additional Elements	OC Sports Enhanced Suite ver 2.0	(see OC Sports Enhanced)
	Oceanic TV Mobile Suite ver 2.0	(see OC Sports Enhanced)
	OCSports.tv Suite ver 2.0	(see OC Sports Enhanced)
	OC16 High School Sports Live (selected sports)	40
	OC16 High School Sports Retelecast	40
	OC Sports Enhanced Promos (shared logo)	min. 240x
	Save Our Sports HHSAA Promo (shared logo)	min. 360x
	"OC Sports - UH Supporter" Promo (shared logo)	min. 500x
	4 Tickets to all applicable regular season UH events	
	1 Parking Pass (Football, Volleyball, Basketball, Baseball)	

Total Value	$525,000
OC Sports Investment	$136,100
Save Our Sports HHSAA Donation*	$2,000
Total Investment:	**$138,100**

Optional VIP Post Season Contingency Budget: $15,000

*Package sponsor contributes $2,000 directly to HHSAA in support of the Save Our Sports program.
Note: All events and schedules subject to change.

REDACTED – FOR PUBLIC INSPECTION



E HOLOMUA KAKOU

Let Us Move Forward Together

UH Athletics Spots

SPORT		Events	Spots Per Game
WAHINE SOCCER	Live	2	1
	Retelecast	4	1
	OC Sports Enhanced	6	1
WAHINE VOLLEYBALL	Live	18	1
	Retelecast	36	1
	OC Sports Enhanced	54	1
WARRIOR FOOTBALL	Live - OC Sports	8	1
	Retelecast	16	1
	OC Sports Enhanced	24	1
WARRIOR BASKETBALL	Live	14	1
	Retelecast	28	1
	OC Sports Enhanced	42	1
WAHINE BASKETBALL	Live	8	1
	Retelecast	16	1
	OC Sports Enhanced	24	1
WARRIOR VOLLEYBALL	Live	10	1
	Retelecast	20	1
	OC Sports Enhanced	30	1
WARRIOR BASEBALL	Live	18	2
	Retelecast	36	2
	OC Sports Enhanced	54	2
WAHINE SOFTBALL	Live	9	1
	Retelecast	18	1
	OC Sports Enhanced	27	1
SAND VOLLEYBALL	Live	3	1
	Retelecast	6	1
	OC Sports Enhanced	9	1
SUMMER SESSION	14x/week x 13 weeks	182	1
	OC Sports Enhanced	182	1
	Total:	**904**	**1012**

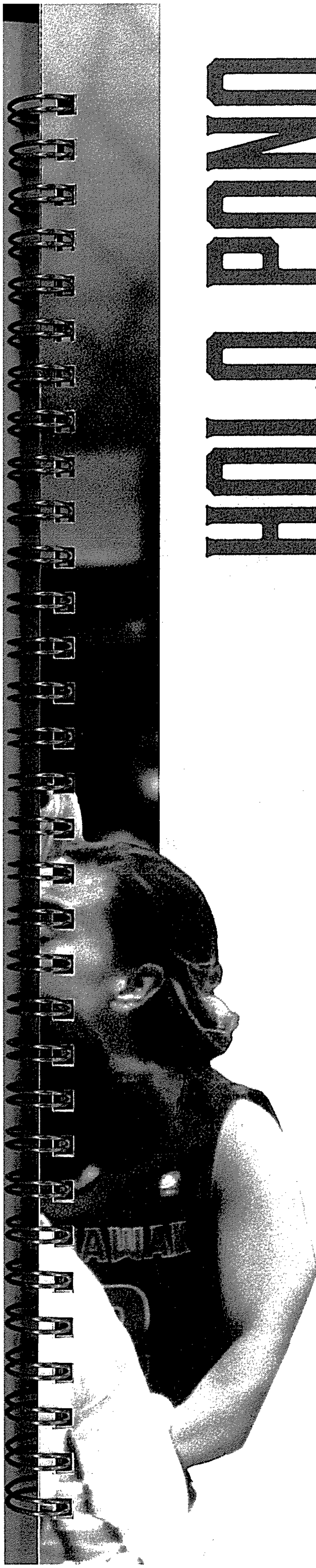
Additional Elements

Oceanic TV Mobile Suite ver 1.0	(see OC Sports Enhanced)
OCSports.tv Suite ver 1.0	(see OC Sports Enhanced)
OC16 High School Sports Live (selected sports)	20
OC16 High School Sports Retelecast	20
OC Sports Enhanced Promos (shared logo)	min. 240x
Save Our Sports HHSAA Promo (shared logo)	min. 240x
"OC Sports - UH Supporter" Promo (shared logo)	min. 360x
2 Tickets to all applicable regular season UH events	
Total Value	$265,000
OC Sports Investment	$84,825
Save Our Sports HHSAA Donation*	$2,000
Total Investment:	**$86,825**

Optional VIP Post Season Contingency Budget: $15,000

*Package sponsor contributes $2,000 directly to HHSAA in support of the Save Our Sports program.
Note: All events and schedules subject to change.

REDACTED – FOR PUBLIC INSPECTION



HOLO PONO
To Succeed

UH Athletics Spots

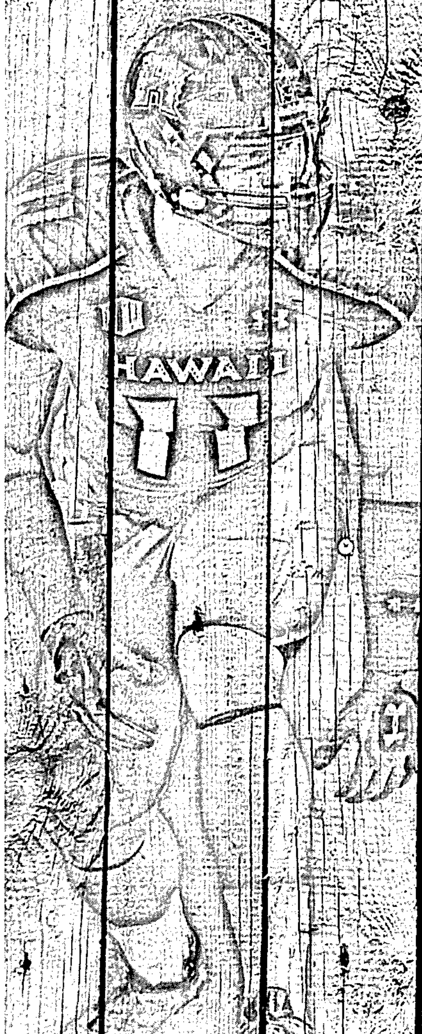
SPORT		Events	Spots Per Game
WAHINE SOCCER	Live	1	1
	Retelecast	2	1
	OC Sports Enhanced	3	1
WAHINE VOLLEYBALL	Live	14	1
	Retelecast	28	1
	OC Sports Enhanced	42	1
WARRIOR FOOTBALL	Live - OC Sports	8	1
	Retelecast	16	1
	OC Sports Enhanced	24	1
WARRIOR BASKETBALL	Live	14	1
	Retelecast	28	1
	OC Sports Enhanced	42	1
WAHINE BASKETBALL	Live	8	1
	Retelecast	16	1
	OC Sports Enhanced	24	1
WARRIOR VOLLEYBALL	Live	10	1
	Retelecast	20	1
	OC Sports Enhanced	30	1
WARRIOR BASEBALL	Live	11	2
	Retelecast	22	2
	OC Sports Enhanced	33	2
WAHINE SOFTBALL	Live	9	1
	Retelecast	18	1
	OC Sports Enhanced	27	1
SAND VOLLEYBALL	Live	3	1
	Retelecast	6	1
	OC Sports Enhanced	9	1
SUMMER SESSION	14x/week x 13 weeks	91	1
	OC Sports Enhanced	91	1
	Total:	**650**	**716**

Additional

Oceanic TV Mobile Suite ver 1.0	(see OC Sports Enhanced)
OCSports.tv Suite ver 1.0	(see OC Sports Enhanced)
OC Sports Enhanced Promos (shared logo)	min. 240x
Save Our Sports HHSAA Promo (shared logo)	min. 240x
"OC Sports - UH Supporter" Promo (shared logo)	min. 360x
Total Value	$155,000
OC Sports Investment	$57,250
Save Our Sports HHSAA Donation*	$2,000
Total Investment:	**$59,250**

Optional VIP Post Season Contingency Budget: $15,000

*Package sponsor contributes $2,000 directly to HHSAA in support of the Save Our Sports program.
Note: All events and schedules subject to change.



[illegible]

[illegible]

DAN SCHMIDT

EXECUTIVE EDITORS

[illegible]

[illegible]

SPORTS SALES MANAGER

STUART CHANG

ART DIRECTOR AND DESIGNER

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ENHANCED TEAM

TRAVIS NOMURA

[illegible]

[illegible]

[illegible]

OC SPORTS STAFF

DAN SCHMIDT

[illegible]

[illegible]

[illegible]

PHOTOGRAPHY

[illegible], UH MEDIA RELATIONS

ARTWORK

[illegible], ELECTRIC PENCIL

[illegible], ELECTRIC PENCIL

OC Sports

Oceanic Time Warner Cable

Appendix B

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Charter Communications, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership	)	MB Docket No. 15-149
	)	
For Consent To the Transfer of Control of Licenses and Authorizations	)	

DECLARATION OF JASON FUJITA

I, Jason Fujita, hereby declare the following:

1. I am Vice President, Consumer Sales & Product Marketing at Hawaiian Telcom Services Company, Inc. ("Hawaiian Telcom"). In that position, I am responsible for Hawaiian Telcom's contact centers for residential and business customers, along with Public Communications (pay phones), Wireless, TV and Multi Dwelling Units Sales and Product Marketing. Except where otherwise specifically indicated, the information in this declaration is based upon my personal knowledge, and I could testify to these facts if necessary.

2. Approximately four years ago, Hawaiian Telcom launched the first landline based competitive video service in Hawaii. Hawaii's multiple islands and unique terrain present steep entry barriers that deter deployment of alternative communications infrastructure. Hawaiian Telcom has approximately 31,000 customers in total or 7 percent of total homes in Hawaii (10 percent on Oahu). Hawaiian Telcom will have less than 0.3 percent of the nationwide end user subscribers.

3. Hawaii's remote location results in a weaker satellite signal, which increases DBS installation and service costs because larger dish receivers are required. In addition, rain fade problems are more prevalent in Hawaii due to the lower angle of the DBS satellites on the horizon. The higher density of Multiple Dwelling Units ("MDUs") in Hawaii also makes DBS less viable for a large percentage of households. This lack of substitutability is borne out by Hawaiian Telcom's own market analysis, and confirmed by reports from a leading market research firm, showing that Dish and DIRECTV together have a combined market share of only approximately 11.2 percent of the Honolulu Designated Market Area ("DMA"),[1] compared to a combined approximately 30 percent market share for Dish and DIRECTV in the rest of the U.S.[2]

4. Broadcast TV is also not a viable substitute in Hawaii. Over-the-air TV alone currently accounts for only approximately 6.1 percent of the households in the Honolulu DMA.[3] Hawaii's mountainous terrain makes it technically difficult and extremely costly to provide adequate over-the-air broadcast TV signals to Hawaii's consumers. In addition, the higher density of MDUs in Hawaii means that the placement of roof antennas is not an option. As a result, without subscribing to a wireline MVPD, a large percentage of Hawaii's residents are unable to obtain a full complement of the network TV stations—ABC, NBC, CBS, FOX, and PBS.

[1] TVB Research, ADS, Wired-Cable and Over-The-Air Penetration by Market (July 2015; Nielsen Media Research, DMA Household Universe Estimates), located at http://www.tvb.org/research/184839/4729/ads_cable_market?ads_mkt=89, last viewed on October 2, 2015 ("July 2015 Nielsen Research").

[2] See Annual Assessment of the Status of Competition in the market for the Delivery of Video Programming, Sixteenth Report, 28 FCC Rcd 10496, ¶ 133, Table 7 (2015) ("*Sixteenth Video Competition Report*") (based on 2013 data).

[3] July 2015 Nielsen Research.

5. There is relatively small market for stand-alone video service. Today, the market is at a minimum a bundle of video and broadband. Currently, approximately 93 percent of Hawaiian Telcom's video customers also subscribe to broadband, and Hawaiian Telcom generally focuses on selling a video/broadband bundle, not on selling stand-alone video.

6. Time Warner Cable ("Oceanic TWC" or "TWC") provides video services to approximately 76 percent of total households in the State of Hawaii.

7. TWC owns and controls OCSports, a Regional Sports Network ("RSN") serving Hawaii. OCSports televises local sports programming, including University of Hawaii football and other intercollegiate athletics in which the University of Hawaii competes. Such programming is particularly important in Hawaii, because there are no national sports franchises located in Hawaii. Therefore, sports viewers demand access to local collegiate sports.[4] The inability of Hawaiian Telcom to offer such programming would significantly hobble it in the marketplace for MVPD subscriber loyalty, particularly because over-the-air TV is not a reliable alternative due to the geographic terrain in Hawaii.

8. TWC already has leveraged its control of OCSports to raise Hawaiian Telcom's costs. Unlike other linear cable-owned RSNs, TWC in the past did not allow Hawaiian Telcom to resell commercial airtime for local advertising to other potential advertisers. This enabled TWC to leverage an unreasonable competitive advantage in the local advertising market, uniquely disadvantaging Hawaiian Telcom. In addition, the

[4] Such devotion of sports fans to Hawaii collegiate sports is demonstrated by Oceanic TWC promotional materials which highlight such unique subscriber preferences. *See* Appendix A.

market power enabled TWC in the past to require Hawaiian Telcom to carry the RSN (OCSports) on Hawaiian Telcom's basic tier, which increased Hawaiian Telcom non-compensable costs and inhibited its free channel positioning and marketing efforts, a constraint that TWC does not face in Hawaii. It is true that Oceanic TWC ceased such demands, but only after Hawaiian Telcom raised such concerns after Comcast's Application to acquire TWC was filed with the Commission. Hawaiian Telcom strongly suspects that such capitulation was made to reduce regulatory controversy, and that such anticompetitive behavior can be expected to resume if the instant transaction is approved. This leverage will only increase with the addition of Charter/TWC/Advance's national programming assets. TWC continues to refuse to provide Hawaiian Telcom a long term contract for OCSports and will only negotiate a one year contract.

9. In addition, Oceanic TWC produces and televises the OC16 channel,[5] which includes Hawaii high school sports, which are enormously popular in Hawaii. As Hawaiian Telcom has served customers, fielded customer inquiries, and conducted surveys of potential and existing customers and customers who have discontinued service, it has learned that a significant portion of those surveyed indicate that the inability to receive the OC16 channel and high school sports is a deciding factor for not subscribing to, being completely satisfied with, or disconnecting from Hawaiian Telcom video services. But unlike with University of Hawaii sports channel OCSports, TWC refuses entirely to allow Hawaiian Telcom to purchase this programming at fair market rates, thus preventing Hawaiian Telcom from offering this highly valued programming to its customers.

[5] http://oc16.tv.

10. TWC also includes on its cable TV line-up other local program outlets—NGN (Japanese cultural programming) and SURF (Hawaii surfing coverage).[6] Because Hawaiian Telcom is not allowed to certain local interest channels including two out of the four NGN channels and the SURF channel, TWC is using its dominant position in the video distribution market to impede competition from Hawaiian Telcom. These high school sports and other local interest channels should be included in any programming access requirement adopted in this proceeding.

11. Hawaiian Telcom needs reasonably priced access to "must have" Discovery programming such as The Discovery Channel, TLC, Animal Planet, and OWN, as well as others. Discovery channels are viewed in the industry as "must have" programming by MVPDs.

12. Programming accounts for *****BEGIN HIGHLY CONFIDENTIAL END HIGHLY CONFIDENTIAL***** of Hawaiian Telcom's video revenues. While Hawaiian Telcom purchases programming through cooperatives, these cooperatives still purchase at lower volumes than AT&T and, of course, the proposed Charter/TWC/Advanced combination.

13. In Hawaii, TWC has also leveraged its dominance in the video market by bundling video and broadband, a marked consumer preference in Hawaii. Thus, TWC in Hawaii has approximately a 69 percent share of the consumer broadband market. In comparison, Hawaiian Telcom has approximately a 25 percent consumer market share with approximately another 6 percent of customers served by other providers.

---

6 Applications, Appendix G.

14. TWC has entered into a wide variety of arrangements with MDUs, such as revenue sharing arrangements, one-time incentive payments, as well as entering into exclusive marketing contracts.

15. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

JASON FUJITA

Dated: October 13, 2015